

## INTERNATIONAL HUMAN RIGHTS LAW

### I INTRODUCTION

This note reviews New Zealand's state practice concerning international human rights law in 2016. It was a notable year for New Zealand as it concluded its term as a non-permanent member of the United Nations Security Council in December 2016. During its two years on the Security Council, New Zealand considered some of the most serious threats to international peace and security that have significant human rights dimensions, including: the dismal humanitarian situation in Syria, the continued brutal attacks by Islamic State of Iraq and the Levant ('ISIL') on civilians, the continuing Israeli/Palestinian conflict, the continued instability in the eastern Congo at the hands of armed groups, as well as a host of other issues across Africa ranging from attacks in northern Mali to the crises in Somalia, Libya and the Central African Republic. Aside from its engagement with UN Charter based bodies, New Zealand continued its engagement with UN treaty based bodies as a result of its commitments under various human rights treaties. These treaty based bodies issued concluding observations and recommendations in relation to New Zealand's commitments under the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child* and its *Optional Protocol*, while New Zealand submitted its periodic reports as per its commitments under the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination against Women* and follow-up information under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. On the domestic side, the New Zealand Human Rights Commission continued its work, much of which focused on the recovery of Christchurch and in particular the human rights aspects of residential red zones post-earthquake, as well as exploring the issue of assisted dying which was deemed the human rights debate of the year.

### II NEW ZEALAND AND UN HUMAN RIGHTS TREATY BODIES

#### *A Concluding Observations on the Sixth Periodic Report of New Zealand under the International Covenant on Civil and Political Rights*

In May 2015, New Zealand submitted its Sixth Periodic Report under the *International Covenant on Civil and Politics Rights* ('ICCPR')<sup>1</sup> to the Human Rights Committee ('HRC'), the body charged with overseeing the implementation of the Covenant. The report covered the period of January 2008 through March 2015. A draft of the report was circulated for public comment in December 2014, prior to its lodgement with the United Nations. Twenty non-governmental organizations ('NGOs') made submissions on the draft, with these then being considered in the preparation of the final report.<sup>2</sup> After submission of this report, further information was submitted by eleven Civil Society Organizations including the Aotearoa Indigenous Rights Trust (AIR Trust), the Monitoring Mechanism of the National Iwi Charis, Privacy International and Peace Movement Aotearoa amongst others. This information

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<sup>1</sup> Human Rights Committee, *Consideration of Reports submitted by States parties under Article 40 of the Covenant pursuant to the Optional Reporting Procedure – Sixth Periodic Report of States parties due in 2015: New Zealand*, UN Doc CCPR/C/NZL/6 (2015) [hereinafter 'Sixth Periodic Report ICCPR'].

<sup>2</sup> Ibid [6].

functions as a Shadow Report. A Shadow Report is a report to the HRC from a source other than the government in an effort to fill in the gaps of the ‘not so good’ which might be minimized or overlooked by the government in its report.<sup>3</sup> The importance of a Shadow Report is underscored by the fact that the concluding observations of the HRC, while not formally legally binding, are authoritative interpretations of international human rights law.

At the outset of its *Concluding Observations* issued in April 2016, the HRC welcomed various legislative and institutional measures taken by New Zealand since the last periodic report in 2008, including:

- The adoption of the *Organised Crime and Anti-Corruption Legislation Act 2015*;
- The adoption of the *Harmful Digital Communications Act 2015*;
- The adoption of the *Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014*;
- The adoption of the *Vulnerable Children Act 2014*;
- The adoption of the *Māori Disability Action Plan for Disability Support Services (Whāia Te Ao Mārama) 2012-2017*;
- The adoption of the *National Pasifika Disability Plan (Faiva Ora) 2014-2016*;
- The adoption of the *Marriage (Definition of Marriage) Amendment Act 2013*;
- The adoption of the *Youth Crime Action Plan 2013-2023*;
- The adoption of the *Māori Education Strategy, Ka Hikitia: Accelerating Success 2013-2017*.<sup>4</sup>

These measures roughly correspond to the key developments noted by New Zealand in its Sixth Periodic Report.<sup>5</sup>

However, the HRC continued, noting nineteen principle areas of concern and subsequent recommendations for remedy. Some of these areas include concern over underrepresentation of women in corporate governance and senior management in the public and private sector, the overrepresentation of women in some types of occupations, and the gender pay gap. Collectively deemed concerns in relation to equality between women and men, the recommendations here include the full incorporation of the principle of equality between women and men in all national policies,<sup>6</sup> the operationalization and implementation of equal pay for work of equal value across New Zealand,<sup>7</sup> the promotion of greater women’s representation in managerial and leadership positions in the public and private sector<sup>8</sup> and the

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<sup>3</sup> See Tony Ellis, *In the Matter of New Zealand’s 6<sup>th</sup> Periodic Report: Alternative Shadow Report Filed by Dr. Tony Ellis* (14 March 2016) Office of United Nations High Commissioner for Human Rights <[http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NZL/INT\\_CCPR\\_CSS\\_NZL\\_23261\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NZL/INT_CCPR_CSS_NZL_23261_E.pdf)>.

<sup>4</sup> Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of New Zealand*, UN Doc CCPR/C/NZL/CO/6 (2016) [3] [hereinafter ‘ICCPR Concluding Observations’].

<sup>5</sup> Sixth Periodic Report ICCPR, above n 1, [3].

<sup>6</sup> ICCPR Concluding Observations, above n 4, [18(a)].

<sup>7</sup> Ibid [18(d)].

<sup>8</sup> Ibid [17(c)].

development and implementation of programmes to achieve general equality and empowerment for all women and girls, with particular focus on Māori and Pasifika women and girls.<sup>9</sup>

Indeed, the HRC called for particular focus on protecting Māori and Pasifika peoples in a number of recommendations, including those related to domestic and gender-based violence, child abuse, non-discrimination in employment and vocational training and non-discrimination in law enforcement. Regarding domestic and gender based violence, the HRC welcomed New Zealand's establishment in 2014 of the Ministerial Group on Family Violence and Sexual Violence and the implementation of community based anti-domestic violence campaigns.<sup>10</sup> However, it remains concerned about the high prevalence of domestic violence, especially among Māori and Pasifika women and girls.<sup>11</sup> Its recommendations include the incorporation of programmes to combat such violence into the *National Plan of Action for Humans Rights*<sup>12</sup> and the development and implementation of programmes aimed at victims' rehabilitation and redress.<sup>13</sup> Regarding violence against children, the HRC remained concerned about the significant number of children in New Zealand who suffer physical and psychological abuse and neglect and, in particular, regretted the absence of information regarding programmes of rehabilitation, reintegration and redress for child victims, in particular Māori and Pasifika child victims.<sup>14</sup> It calls on New Zealand to strengthen efforts to combat child abuse including through the development and implementation of multi-stakeholder, child-friendly early detection and reporting mechanisms.<sup>15</sup> The HRC also requests that New Zealand provide detailed information in its next periodic report on the outcomes of the *Children's Action Plan* and the review of the Child, Youth and Family agency.<sup>16</sup> Aside from issues of violence, another theme that concerned the HRC, in relation to Māori and Pasifika in particular, was discrimination. Regarding discrimination in the workplace, the HRC recommended that New Zealand address the high unemployment rates among Māori and Pasifika and in particular Māori and Pasifika women and young people through the development and implementation of comprehensive employment and vocational training strategies.<sup>17</sup> In law enforcement, the HRC recommended the review of its policies, with the aim to reduce the incarceration rates and overrepresentation of members of Māori and Pasifika communities, particularly women and young people,<sup>18</sup> as well as the elimination of direct and indirect discrimination against Māori and Pasifika in the administration of justice through human rights training programmes.<sup>19</sup>

The HRC also concerned itself with issues in relation to Indigenous Peoples and discrimination more broadly. As regards the former, the HRC remained concerned that since the adoption by the Waitangi Tribunal decision WAI 262 in 2011, New Zealand has not

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<sup>9</sup> Ibid [18(b)].

<sup>10</sup> Ibid [29].

<sup>11</sup> Ibid.

<sup>12</sup> Ibid [29(b)].

<sup>13</sup> Ibid [29(d)].

<sup>14</sup> Ibid [31].

<sup>15</sup> Ibid [32(a)].

<sup>16</sup> Ibid [32(b)].

<sup>17</sup> Ibid [22(a)].

<sup>18</sup> Ibid [26(a)].

<sup>19</sup> Ibid [26(b)].

provided the relevant human rights bodies with information regarding policies and implementation timetable. Furthermore, it noted New Zealand's insufficient engagement with Indigenous Peoples prior to the signing of the *Trans-Pacific Partnership Agreement* in February 2016 which included provisions that may have had a negative impact on their rights.<sup>20</sup> The HRC recommends that to remedy these issues, New Zealand strengthens the role of the *Treaty of Waitangi* in the existing constitutional arrangements<sup>21</sup> and guarantees the informed participation of Indigenous Peoples in all relevant national and international consultation processes including those that affect them directly.<sup>22</sup> Regarding discrimination, the HRC remained concerned with prejudice against racial and religious groups in New Zealand<sup>23</sup> and recommended the development and implementation of a comprehensive national strategy to combat racism, racial discrimination, xenophobia and religious hatred.<sup>24</sup>

Finally, the HRC also expressed concern about the high number of reservations to human rights treaties in particular *ICCPR* arts 10.2 and 10.3 concerning the detention of youth and urged New Zealand to withdraw these reservations.<sup>25</sup> Concerns about privacy and specifically privacy in the context of anti-terrorism legislation were raised by the HRC, vis-a-vis government surveillance of communication, so it recommends the review of New Zealand's counter-terrorism legislation<sup>26</sup> as well as the review of the legal framework for regulating communications surveillance.<sup>27</sup>

#### *B Concluding Observations on the Fifth Periodic Report of New Zealand under the Convention on the Rights of the Child*

In December 2015, New Zealand submitted its Fifth Periodic Report regarding the *Convention on the Rights of the Child* ('CRC') to the body charged with overseeing its implementation: the Committee on the Rights of the Child (the 'Committee').<sup>28</sup> This report included developments from February 2011 through March 2015 and aimed to update the Committee on New Zealand's progress against the *2011 Concluding Observations*.<sup>29</sup> After submission of this periodic report, further information was submitted by eight Civil Society Organizations including the New Zealand Global Coalition to Protect Education from Attack, the New Zealand Law Society and Stop Intersex Genital Mutilations.org amongst others. In addition, a number of National Human Rights Institutions ['NHRI'] submitted shadow reports, including the New Zealand Children's Commissioner and the New Zealand Human Rights Commission.

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<sup>20</sup> Ibid [45].

<sup>21</sup> Ibid [46(a)].

<sup>22</sup> Ibid [46(b)].

<sup>23</sup> Ibid [19].

<sup>24</sup> Ibid [20].

<sup>25</sup> Ibid [5].

<sup>26</sup> Ibid [14].

<sup>27</sup> Ibid [16].

<sup>28</sup> Committee on the Rights of the Child, *Consideration of Reports submitted by States parties under Article 44 of the Convention – Fifth Periodic Report of States parties due in 2015: New Zealand*, UN Doc CRC/C/NZL/5 (2015) [hereinafter 'CRC Fifth Periodic Report'].

<sup>29</sup> Ibid [1].

At the outset of its *Concluding Observations* issued in October 2016, the Committee welcomed the submission of the Fifth Periodic Report and the progress achieved by New Zealand in children's rights, noting in particular its ratification of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* in 2011.<sup>30</sup> However, the Committee highlighted six areas of concerns that require the adoption of 'urgent' measures. These areas include: violence, abuse and neglect; children deprived of a family environment; standard of living; children belonging to minority or Indigenous groups; child labour; and juvenile justice.<sup>31</sup>

Regarding violence, abuse and neglect, the Committee recommends that New Zealand immediately end the use of restraints and detention in state care of children, the creation of a national database on all cases of violence against children and the development of a comprehensive strategy to combat the abuse and neglect of children in all settings, with particular attention to Māori and Pasifika children and children with disabilities. It further recommends that regarding Māori and Pasifika children and children with disabilities, New Zealand strengthens education and awareness programmes to prevent and combat child abuse.<sup>32</sup>

In relation to children deprived of a family environment, the Committee recommends that in reforming the care system, New Zealand needs to ensure that the best interest of the child is the pre-eminent consideration in every case and that the voice of the child is heard in matters affecting her or him. Further, the Committee recommends ensuring that in this reformation process, there is a common understanding of a child-centred approach across the care system with regular monitoring of the implementation and impacts of reform with particular attention, again, to Māori and Pasifika children and children with disabilities. With regard to Māori children specifically, the Committee urges New Zealand to address the overrepresentation of Māori children in state care by implementing the recommendations of the Children's Commissioner 2015 report entitled *State of Care*.<sup>33</sup>

As regards the standard of living, the Committee recommends the introduction of a systemic approach to child poverty with particular focus on Māori and Pasifika children and establishing a national definition of poverty. The Committee also suggests that New Zealand should consider holding targeted consultations with families, children and Civil Society Organizations with the aim of strengthening strategies and measures for the reduction of child poverty.<sup>34</sup>

Regarding matters related to children belonging to minority or Indigenous groups, the Committee urges New Zealand to develop a comprehensive and cross-sector strategy for the full enjoyment of the rights of Māori and Pasifika children in light of the Committee's *General Comment No 11* (2009) which specifically addresses the rights of Indigenous children under

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<sup>30</sup>Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of New Zealand*, UN Doc CRC/C/NZL/CO/5 (2016), [2]–[3] [hereinafter 'CRC Concluding Observations'].

<sup>31</sup> Ibid [4].

<sup>32</sup> Ibid [23].

<sup>33</sup> Ibid [28].

<sup>34</sup> Ibid [36].

the CRC. In the development of this strategy, the Committee also urges close cooperation with Indigenous communities.<sup>35</sup>

Concerning child labour, the Committee recommends the creation of a minimum age of entry into employment that is in line with international standards, the creation of minimum wage guarantees for working children under the age of sixteen, the ratification of the *International Labour Organization Minimum Age Convention 1973 (No 138)* and the amendment of the *Health and Safety at Work Act* to recognize and address issues affecting working children.<sup>36</sup>

Finally, concerning juvenile justice, the Committee laments New Zealand's lack of progress in this area and urges the Government to raise the minimum age of criminal responsibility to eighteen years old and to strengthen efforts to address the overrepresentation of Māori and Pasifika children and young people in the juvenile justice system, including through improvement of the police's cultural awareness.<sup>37</sup>

*C Concluding Observations on the Report submitted by New Zealand under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*

As aforementioned, the Committee on the Rights of the Child welcomed New Zealand's ratification of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* ('CRC-OP-SC') in 2011.<sup>38</sup> As with other international human rights treaties, the CRC-OP-SC requires that state parties submit a periodic report. New Zealand submitted its first report under the CRC-OP-SC in 2014.<sup>39</sup> In October 2016, the Committee released its *Concluding Observations* on this initial report.<sup>40</sup>

The Committee begins by welcoming New Zealand's initial report under the CRC-OP-SC and notes that the present *Concluding Observations*<sup>41</sup> should be read in conjunction with New Zealand's Fifth Periodic Report regarding the CRC.<sup>42</sup> It provides an overview of the positive aspects taken by New Zealand in relation to the implementation of CRC-OP-SC, including the adoption of:

- The 2015 amendment to the *Crimes Act* aimed at criminalizing domestic trafficking and aspects of grooming, and the 2005 amendment aimed at

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<sup>35</sup> Ibid [42].

<sup>36</sup> Ibid [44].

<sup>37</sup> Ibid [45].

<sup>38</sup> See Committee on the Rights of the Child, *Concluding Observations on the Report submitted by New Zealand under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, UN Doc CRC/C/OPSC/NZL/CO/1 (2016) [hereinafter 'CRC-OP-SC Concluding Observations'].

<sup>39</sup> See Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: New Zealand*, UN Doc CRC/C/OPSC/NZL/1 (2014).

<sup>40</sup> See generally CRC-OP-SC Concluding Observations.

<sup>41</sup> Ibid.

<sup>42</sup> See CRC Fifth Periodic Report, above n 28, [2]–[3].

criminalizing dealing in children for the purpose of sexual exploitation, the removal of body parts and engagement in forced labour;

- The *Vulnerable Children Act*, in 2014, which sets clear expectations for consistent safety checking across the children's workforce;
- The *Victims' Rights Amendment Act*, the *Parole Amendment Act* and the *Sentencing Amendment Act*, in 2014, and the *Children, Young Persons and Their Families Amendment Act*, in 2016;
- The *Adoption Amendment Act*, in 2011, which inserts sections 27 (A)-(D) into the *Adoption Act 1955* and creates the offence to improperly induce consent for the adoption of a child.<sup>43</sup>

The Committee proceeds to offer a series of recommendations. Aside from general recommendations to aid in further implementation of the *CRC-OP-SC*,<sup>44</sup> it offers a series of specific recommendations in relation to prevention and prohibition of the sale of children, child prostitution and child pornography, as well as suggestions for the protection of the rights of child victims.

Regarding the prevention of the sale of children, child prostitution and child pornography, the Committee recommends a campaign to research the nature and root causes of the sexual exploitation of children in order to identify those at risk.<sup>45</sup> Furthermore, the Committee recommends preventative measures targeted against exploitation over the Internet, the implementation of social and economic development programmes and poverty reduction strategies<sup>46</sup> and the conduct of advocacy campaigns for the tourism industry to highlight the risk of child sex tourism.<sup>47</sup>

Concerning the prohibition of the sale of children, child prostitution and child pornography, the Committee recommends that New Zealand explicitly define and criminalize all offences in the context of the sale of children in accordance with *CRC-OP-SC* arts 2 and 3<sup>48</sup> as well the review of the *Prostitution Reform Act (2003)*<sup>49</sup> and the *Film, Videos and Publications Classifications Amendment Act (2005)* in order to ensure full compliance with these articles as regards attempted child pornography or complicity with child pornography.<sup>50</sup> Furthermore, it suggests that New Zealand revise its legislation to ensure that all legal persons, including corporations, can be held liable for offences under the *CRC-OP-SC*<sup>51</sup> and ensure that its legislation enables it to establish and exercise extraterritorial jurisdiction over all offences covered by the *CRC-OP-SC*.<sup>52</sup>

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<sup>43</sup> CRC-OP-SC Concluding Observations, above n 38, [4].

<sup>44</sup> Ibid [8]–[21].

<sup>45</sup> Ibid [23(a)].

<sup>46</sup> Ibid [23(b) & (c)].

<sup>47</sup> Ibid [25].

<sup>48</sup> Ibid [29].

<sup>49</sup> Ibid [33].

<sup>50</sup> Ibid [35].

<sup>51</sup> Ibid [39].

<sup>52</sup> Ibid [41].

Finally, as regards the protection of the rights of child victims, the Committee makes a number of recommendations, directed towards the criminal justice system, regarding the legal protection and confidentiality of child victims and/or witnesses in criminal proceedings. In particular, it recommends the enactment of the *Evidence Amendment Bill* to allow child victims and/or witnesses to provide evidence in alternative ways<sup>53</sup> as well as the ensuring that child victims and/or witnesses are informed of their rights,<sup>54</sup> are able to voice their concerns<sup>55</sup> and that their identity and right to privacy is protected.<sup>56</sup>

*D Twenty-First and Twenty-Second Periodic Report of New Zealand under the Convention of the Elimination of All Forms of Racial Discrimination*

In March 2016, New Zealand submitted its Twenty-first and Twenty-second Periodic Report pursuant to its commitment under the *International Convention on the Elimination of All Forms of Racial Discrimination* ('*ICERD*'). It covers the period from December 2011 until December 2015 and responds to the Committee on the Elimination of Racial Discrimination's ('*CERD*') concluding observations following New Zealand's last report including detailed information on measures taken to implement the concluding observations as well as providing follow-up information on recommendations.<sup>57</sup>

It begins by noting the Government's commitment to the protection and promotion of international human rights as embodied by the *Universal Declaration on Human Rights* as well as other international human rights treaties. It notes that it is the continuing policy of New Zealand to eliminate discrimination, intolerance and violence based on colour, religion, race or ethnicity or national origin and that the law protects from discrimination on these grounds.<sup>58</sup> However, the report notes that racial discrimination is the most common form of discrimination experienced in New Zealand, with six per cent of respondents believing that racial discrimination was the reason for them being treated unfairly. People who identified as Asian reported the highest level of racial discrimination followed by Māori and Pacific peoples.<sup>59</sup> After an initial discussion of efforts to specifically promote and protect the rights of Indigenous peoples, the report turns to its core mission to respond to the concluding observations of the CERD as well as to provide it with follow-up information on its recommendations. The report organizes this response into specific articles of the *ICERD* including arts 2, 4, 5 and 7.

Regarding art 2, the report details the constitutional structure of New Zealand. It notes that New Zealand does not have a fully written constitution but rather it is found in formal legal documents, decisions of courts and in practices—some of which have crystalized into conventions that are almost always followed and that this framework increasingly reflects the

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<sup>53</sup> Ibid [47(b)].

<sup>54</sup> Ibid [47(e)].

<sup>55</sup> Ibid [47(f)].

<sup>56</sup> Ibid [47(g)].

<sup>57</sup> Committee on the Elimination of Racial Discrimination, *Consideration of Reports submitted by States Parties under Article 9 of the Convention – Twenty-first and twenty-second Periodic Reports of States parties due in 2015: New Zealand*, UN Doc CERD/C/NZL/21-22 (2016) [1]–[3] [hereinafter '*CERD Twenty-First and Twenty-Second Periodic Report*'].

<sup>58</sup> Ibid [5]–[7].

<sup>59</sup> Ibid [9].



fact that the *Treaty of Waitangi* is regarded as the founding document of the government of New Zealand.<sup>60</sup> It details some of these key constitutional features, including the *New Zealand Bill of Rights Act 1990*,<sup>61</sup> the New Zealand Human Rights Commission, the *Human Rights Act 1993*,<sup>62</sup> the Constitutional Advisory Panel – Te Ranga Kaupapa Ture<sup>63</sup> and the *Treaty of Waitangi* and the Tribunal.<sup>64</sup>

Regarding art 4, the report comments on the unlawfulness of racial disharmony and offence of inciting racial disharmony. It notes that it is unlawful to excite hostility against, or to bring into contempt, any group of persons on grounds including colour, race or ethnic or national origins through published or distributed written matter or spoken words in public, and reports back to the CERD that, during the reporting period, 243 complaints were received on these grounds.<sup>65</sup> The government also notes that, during this reporting period, the *Harmful Digital Communications Act* was enacted by Parliament addressing harmful digital communications which include inciting racial hatred through digital communication<sup>66</sup> and was enacted in response to a finding by the New Zealand Law Commission that existing remedies for harmful communications do not effectively address new forms of harm made possible by digital communications.<sup>67</sup>

Article 5 addresses the ongoing inequalities faced by Māori and Pacific peoples in employment, education, health, social services and housing as well as the overrepresentation of Māori in the justice and prison system.<sup>68</sup> Overall, the government has set ambitious ‘Better Public’ services targets to reduce crime by 20 per cent by June 2018.<sup>69</sup> Regarding overrepresentation of Māori in the justice and prison system, the report notes that significant progress has been made to improve the responsiveness of the criminal justice system to Māori and Pacific peoples through rehabilitative programmes as well as interventions based on *tikanga* behavioural guidelines for daily life and interaction in Māori culture<sup>70</sup>, consultation with the Māori community<sup>71</sup> and the use of restorative justice.<sup>72</sup> Article 5 also addresses issues related to education, noting that in the CERD’s Concluding Observations, it suggested strengthening special measures to increase the level of education attainment of Māori and Pacific children. A central task for the Ministry of Education – Te Tahuhu o te Matauranga is to ensure that the education system meets the learning needs of all New Zealanders and while most learners are in English-language settings, the system also enables learning in Māori-medium, Pacific peoples’ language or bilingual settings that recognize and build on language, culture and identity. Despite overall improvements in achievement of National Standards and

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<sup>60</sup> Ibid [24].

<sup>61</sup> Ibid [25]–[30].

<sup>62</sup> Ibid [31]–[38].

<sup>63</sup> Ibid [39]–[42].

<sup>64</sup> Ibid [47]–[59].

<sup>65</sup> Ibid [126].

<sup>66</sup> Ibid [129].

<sup>67</sup> Ibid [130].

<sup>68</sup> Ibid [142].

<sup>69</sup> Ibid [144].

<sup>70</sup> Ibid [145]–[149].

<sup>71</sup> Ibid [153]–[157].

<sup>72</sup> Ibid [161]–[162].

National Certificate in Educational Achievement (‘NCEA’), more needs to be done for students from low socio-economic, Māori and Pacific backgrounds.<sup>73</sup> For instance, the *Ka hikitia-Accelerating Success 2013-2017* programme is in its second phase of the government’s strategy to realize Māori potential in secondary and tertiary education and *The Māori Language – Te Reo Māori Bill* was introduced into Parliament in July 2014 to update the *Māori Language Act 1987* to give effect to various aspects of the Māori Language Strategy.<sup>74</sup> Further, the *Pasifika Education Plan (PEP) 2013-17* sets out the education sector’s vision to raise achievement in education for Pacific peoples by putting Pacific learners, their parents, families and communities at the centre of the education system in order to demand better outcomes.<sup>75</sup> Regarding health, the Committee recommended in its 2013 concluding observations that New Zealand intensified its effort to improve the health outcomes of Māori and Pasifika, and while equality has improved, there remain significant gaps in health outcomes across New Zealand.<sup>76</sup> Two schemes to address this inequality are the *He Korowai Oranga – Māori Health Strategy* and the and the *Ala Mo’ui: Pathways to Pacific Health and Well-being 2014-18*.<sup>77</sup> Article 5 also addresses issues in relation to employment. The government notes that all New Zealand residents are protected by the *Employment Relations Act 2000*.<sup>78</sup> Highlights here include that the unemployment rate for all person decreasing to 5.8 per cent of the labour force in the year to December 2014,<sup>79</sup> the recognition that cultural linkages are important to achieving improved labour market outcomes<sup>80</sup> and the launch of the *Pacific Economic Strategy 2015-2021* in August 2015.<sup>81</sup> In addition, art 5 addresses social services which, the report notes, were addressed by the implementation of welfare reform changes from July 2013.<sup>82</sup> As regards young persons and their families in particular, responsiveness is embedded in the *Ma Mātou Ma Tātou* strategy which is underpinned by *Puao te Atatu* and the *Children, Young Persons and their Families Act 1989*.<sup>83</sup> Finally, art 5 addresses housing. The report notes that Māori are disproportionally high users of social housing and that in response to the issue the Government has launched *He Whare Āhuru He Oranga Tāngata – the Māori Housing Strategy* in July 2014 which sets out six directions to improve Māori housing during the period of 2014–25.<sup>84</sup>

Finally, art 7 of the periodic report addresses issues in relation to culture. Highlights here include government efforts to fund a range of programmes and initiatives designed to assist iwi/Māori with their cultural objectives including *Te Matatini* (a Māori performing arts organization), Creative NZ (funder of Māori customary arts and contemporary arts practice) and Ngā Taonga Sound and Vision (an organization with audio-visual archives important to Māori, Pasifika and other ethnic communities).<sup>85</sup> Further, the New Zealand Film Commission

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<sup>73</sup> Ibid [181]–[182].

<sup>74</sup> Ibid [188]–[199].

<sup>75</sup> Ibid [207].

<sup>76</sup> Ibid [234].

<sup>77</sup> Ibid [237]–[243].

<sup>78</sup> Ibid [254].

<sup>79</sup> Ibid [255].

<sup>80</sup> Ibid [256].

<sup>81</sup> Ibid [257].

<sup>82</sup> Ibid [264].

<sup>83</sup> Ibid [268].

<sup>84</sup> Ibid [277]–[279].

<sup>85</sup> Ibid [290].

has recognized the need to develop and expand the base of Māori filmmaking and in 2013-14 the Commission established a new initiative, *He Ara*, to empower groups of Māori and Pacific people film makers to develop films in a collaborative fashion.<sup>86</sup> Finally, the report notes that the Māori broadcasting sector has continued to grow and that the government has provided significant investment and developed various ownership interest in and regulatory mechanisms for Māori broadcasting.<sup>87</sup>

*E Concluding Observation on the Sixth Periodic Report of New Zealand, Addendum: Information received from New Zealand in follow-up to the Concluding Observations concerning the Convention Against Torture*

Pursuant to its commitment under the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('CAT'), New Zealand submitted its Sixth Periodic Report to the Committee against Torture ('Committee') in December 2013, with general distribution to the UN in March 2014.<sup>88</sup> In response, in June 2015 the Committee released its *Concluding Observations on the Sixth Periodic Report of New Zealand*.<sup>89</sup> At the close of these observations, the Committee requested follow-up information from New Zealand on three of its recommendations within a year. These recommendations concern: the National Preventative Mechanism (para 9 of the concluding observations), the Independent Police Conduct Authority (para 10) and seclusion, solitary confinement and historic claims of abuse (para 15). The *Concluding Observation on the Sixth Periodic Report of New Zealand: Addendum Information received from New Zealand in follow-up to the Concluding Observations*<sup>90</sup> received in June 2016 provides further information about these topics.

1 *National Preventative Mechanism*

The Committee recommended New Zealand to:

- Support the National Preventative Mechanism ('NPM') in developing and maintaining a collective identity through, inter alia, joint visits and joint public reports, harmonized working methods, shared expertise and enhanced coordination.

New Zealand responded, detailing the coordination of the NPM which is led by the Human Rights Commission. In its role as the Central NPM, it identifies systemic issues, holds regular meetings and assists with NPM monitoring.<sup>91</sup>

- Increase NPM's funding and ensure that they are staffed appropriately.

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<sup>86</sup> Ibid [293].

<sup>87</sup> Ibid [295].

<sup>88</sup> See Committee against Torture, *Consideration of Reports submitted by States Parties under Article 19 of the Convention pursuant to the Optional Reporting Procedure – Sixth Periodic Report of States parties due in 2013: New Zealand*, UN Doc CAT/C/NZL/6 (2014).

<sup>89</sup> See Committee against Torture, *Concluding Observations on the Sixth Periodic Report of New Zealand*, UN Doc CAT/C/NZL/CO/6 (2015).

<sup>90</sup> Committee against Torture, *Concluding Observation on the Sixth Periodic Report of New Zealand: Addendum Information received from New Zealand in follow-up to the Concluding Observations*, UN Doc CAT/C/NZL/CO/6/Add.1 (2016).

<sup>91</sup> Ibid [3].

New Zealand responded detailing the increased budgets of many of the main NPMs which include the Commission, the Independent Police Conduct Authority ('IPCA') and the Office of the Children's Commissioner ('OCC'). Independent Crown entities funded through the budget vote for different government agencies, these NPMs are encouraged to make the best use of current resources when funding is not available targeting high risk facilities.<sup>92</sup>

## 2 *The Independent Police Conduct Authority*

The Committee recommended New Zealand to:

- Ensure that the IPCA is fully independent and equipped with a broader mandate.

New Zealand responded stressing that the IPCA based its findings on the facts and the law, noting that it does not answer to the Police or the government regarding these findings. In turn, the independence of the IPCA is similar to that of a court and includes legislative and operational independence as well as a perception of independence through transparent procedures.<sup>93</sup>

## 3 *Seclusion, Solitary Confinement and Historic Claims of Abuse*

The Committee recommended New Zealand to:

- Limit the use of solitary confinement and seclusion.
- Prohibit its use for juveniles, persons with disabilities, pregnant women, women with infants and breastfeeding mothers.
- Compile and publish disaggregated data on the use of solitary confinement and seclusion.
- Conduct investigations into all allegations of ill-treatment, prosecute the perpetrators and provide effective remedies to the victims (in the context of Lake Alice hospital investigations).<sup>94</sup>

In addressing these recommendations, New Zealand focused on the use of seclusion in health-care facilities and the use of solitary confinement in prisons. Regarding the former, the response details New Zealand's mental health legislation concerning seclusion. It stresses the Ministry of Health guidelines that monitor and limit its application, such as the standard that it is not used punitively or to modify unwanted behaviour and that potential physical and psychological effects must be carefully considered in advance of a decision to place a person in seclusion.<sup>95</sup> Regarding the use of solitary confinement in prisons, the response, again, emphasises the guidelines and mechanisms that limit its use such as the stipulation that separation can only be ordered if it is absolutely necessary to reduce risk posed to other prisoners and the possibility of judicial review.<sup>96</sup>

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<sup>92</sup> Ibid [5]–[8].

<sup>93</sup> Ibid [9]–[20].

<sup>94</sup> Ibid [21].

<sup>95</sup> Ibid [22]–[26].

<sup>96</sup> Ibid [27]–[30].

*F Eighth Periodic Report of New Zealand under the Convention of the Elimination of All Forms of Discrimination against Women ('CEDAW')*

New Zealand's Eighth Periodic Report on the implementation of *CEDAW* covers the period between March 2012 to March 2016 and covers the key legislative, judicial, administrative and other measures adopted in the review period that give effect to the provisions of the Convention. The report, received in June 2016, identifies the priorities for women where more work is needed as to the following: supporting more women and girls in education and training; utilizing women's skills and growing the economy; encouraging and developing women leaders; and ensuring women and girls are free from violence.<sup>97</sup> Before concluding with the government's response to the recommendations made by the *CEDAW* Committee in its previous *Concluding Observations* on New Zealand's Seventh Periodic Report,<sup>98</sup> this present report addresses these issues in four principal parts.

Part One centres on discrimination and protections, human rights, prejudice and exploitation of women. It notes that New Zealand's legal framework provides for comprehensive protection against all forms of discrimination covered by *CEDAW* and its commitment to maintaining a legal and policy framework that provides universal protection against all forms of discrimination.<sup>99</sup> In particular, the Ministry for Women ('MfW') is the government's principal advisor on achieving better outcomes for women.<sup>100</sup> The main issues it identifies includes advancing the rights of women with a disability through the *New Zealand Disability Strategy* which is currently being revised as well as through the *Disability Action Plan 2014-2018* which was developed between government agencies and representative organizations of disabled people and will benefit disabled women through priorities and actions including increased employment and economic opportunities, ensured personal safety, a transformed disability support system and the promotion of access in the community.<sup>101</sup> Further, this section focuses on advancing the rights of sexual and gender minorities,<sup>102</sup> marriage equality,<sup>103</sup> the advancement of the rights of migrant and refugee women<sup>104</sup> as well as maximizing opportunities for military women and New Zealand police women.<sup>105</sup>

Part Two concentrates on participation and equality in political and public life, representation and nationality. Its concern with participation and equality in political and public life spans both central and local government<sup>106</sup> as well as women in the law and their representation on statutory boards and private sector boards.<sup>107</sup> It notes that one of its areas of priority is the advancement of women's rights internationally through the diplomatic service,

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<sup>97</sup> Committee on the Elimination of All Forms of Discrimination against Women, *Consideration of Reports submitted by States parties under Article 18 of the Convention – Eighth Periodic Report of States parties due in 2016: New Zealand*, UN Doc CEDAW/C/NZL/8 (2016) [3] [hereinafter 'CEDAW Eighth Periodic Report'].

<sup>98</sup> See *ibid* [229].

<sup>99</sup> *Ibid* [7]–[8].

<sup>100</sup> *Ibid* [10].

<sup>101</sup> *Ibid* [18]–[19].

<sup>102</sup> *Ibid* [23]–[24].

<sup>103</sup> *Ibid* [25]–[27].

<sup>104</sup> *Ibid* [28]–[33].

<sup>105</sup> *Ibid* [39]–[43].

<sup>106</sup> *Ibid* [46]–[49].

<sup>107</sup> *Ibid* [53]–[64].

international conferences and organizations as well as the advancement of women issues in foreign policy and aid programmes.<sup>108</sup>

Part Three of the CEDAW Eighth Periodic Report concerns education, equal access, opportunities and conditions in relation to employment, health, social assistance and rural women. Regarding education, the report places priority on early childhood education<sup>109</sup> and Pacific education initiatives<sup>110</sup> as well as women's participation in tertiary education noting that the attainment rates between ethnic groups is decreasing and that women in general are more likely to participate in tertiary education<sup>111</sup> though fields of study still vary by gender with men still predominant in information technology, engineering and related technologies.<sup>112</sup> In relation to employment, the report notes that a priority remains boosting women's employment and skills in Canterbury which suffered after the 2010 and 2011 earthquakes.<sup>113</sup> Furthermore, the government is focused on flexible working arrangements, the extension of parental leave and equal pay for work of equal value.<sup>114</sup> Regarding health, the government notes that it wants to ensure that all New Zealanders have the same opportunities for good health and that women continue to have higher rates of utilization of primary health services than men, however, they also have reportedly higher levels of unmet needs for such services.<sup>115</sup> Furthermore, though equity has improved, significant gaps remain in health outcomes for New Zealanders, with Māori, Pacific peoples, disabled people and socioeconomically disadvantaged groups generally experiencing worse health outcomes than other New Zealanders.<sup>116</sup> Moreover, women continue to experience certain mental disorders at a higher rate than men such as eating disorders and mood disorders and violence continues to have significant impacts on the physical and mental health of women.<sup>117</sup> Noted improvements include better treatment of sexually transmitted infections, declining rates of teen pregnancy and births as well as a decrease in abortions.<sup>118</sup>

Part Four of the CEDAW Eighth Periodic Report concerns equality before the law, and the elimination of discrimination against women in all matters relating to marriage and family relations. This section highlights that a review of the legislation that sets out the response to family violence has been initiated by the government to ensure that the legislation is fit for purpose. It is part of the Ministerial Group on Family Violence and Sexual Violence work programme.<sup>119</sup> The review will focus on: enhancing victim safety, holding perpetrators accountable for their actions and making them responsible for changing their behaviour and improving links between family violence laws to support a better coordinated system.<sup>120</sup>

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<sup>108</sup> Ibid [66]–[75].

<sup>109</sup> Ibid [80]–[81].

<sup>110</sup> Ibid [82].

<sup>111</sup> Ibid [84]–[87].

<sup>112</sup> Ibid [90].

<sup>113</sup> Ibid [103]–[107].

<sup>114</sup> Ibid [111]–[118].

<sup>115</sup> Ibid [122].

<sup>116</sup> Ibid [125].

<sup>117</sup> Ibid [133]–[137].

<sup>118</sup> Ibid [138]–[145].

<sup>119</sup> Ibid [182].

<sup>120</sup> Ibid.

Furthermore, a new pilot programme has been launched to provide judges with better family violence information about defendants at bail hearings.<sup>121</sup> Indeed, the government notes that violence against women in New Zealand is a serious social problem and that it is widespread and takes many different forms including physical, sexual and psychological.<sup>122</sup> In order to combat the problem, the Government has developed projects specifically focused on sexual violence, including: developing a long-term policy framework for responding to sexual violence, improving sector infrastructure, developing an approach for crisis service purchasing and planning, developing a national sexual violence primary prevention strategy and action plan and developing a national sexual violence strategy and action plan focused on youth.<sup>123</sup> Notable national campaigns geared at achieving these ends include: “It’s not Ok”, “are you that someone?” and “Mates & Dates”.<sup>124</sup>

### III INTERNATIONAL HUMAN RIGHTS LAW JURISPRUDENCE: UN CASES CONCERNING NEW ZEALAND BEFORE THE HUMAN RIGHTS COMMITTEE

After a host of cases before the HRC in 2015, no communications against New Zealand were examined in 2016. A number of new communications will be available in 2017.

### IV HUMAN RIGHTS IN THE DOMESTIC CONTEXT: THE ACTIVITIES OF THE NEW ZEALAND HUMANS RIGHTS COMMISSION

Deriving its statutory mandate from the *Human Rights Act 1993* (‘HRA’) as set out in ss 5(1)–(2), the New Zealand Human Rights Commission (‘Commission’) is New Zealand’s National Human Rights Institution (‘NHRI’). It is accredited as an ‘A’ status NHRI with the Global Alliance of National Human Rights institutions (‘GANHRI’) and so operates in accordance with the *Principles Relating to the Status of National Institutions* (‘Paris Principles’). As such, the Commission is able to offer information to the UN Human Rights Council which is the principal Charter-based mechanism for the protection of human rights. The Commission continued its numerous activities this year for the promotion and protection of human rights in New Zealand, issuing a number of important reports.

#### A *The New Zealand Human Rights Commission Annual Report 2016*

In November 2016, the Commission released the *New Zealand Human Rights Commission Annual Report* (‘Annual Report’).<sup>125</sup> The Annual Report details eight main areas highlighting notable developments from 2016.

The first area of focus is in relation to developments in *Business and Human Rights*. The Annual Report notes that over the past year, the Commission has increased its focus on business and human rights reflecting recognition that the business and human rights landscape has changed. Notably in March 2016, the Commission published *The Business of Human Rights*

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<sup>121</sup> Ibid [185]–[187].

<sup>122</sup> Ibid [194]–[198].

<sup>123</sup> Ibid [204].

<sup>124</sup> Ibid [207]–[214].

<sup>125</sup> New Zealand Human Rights Commission, *New Zealand Human Rights Commission Annual Report* (HRC, Wellington, 2016) [hereinafter ‘Annual Report’].

which provides an overview for businesses on how to be good corporate citizens as well as the publication of the *A-Z Pre-Employment Guide to Human Rights for Employers and Employees* which offers a set of guidelines aimed at ensuring equality and fairness for all job applicants, regardless of gender, ethnicity, age, disability and religion.<sup>126</sup>

Regarding *Harmonious Relations*, the Annual Report notes key developments, which include the Commission's successful advocacy for an increase in the annual refugee resettlement quota from 750 to 1000 in 2016.<sup>127</sup> Specifically, in February 2016 the Commission published the *New Zealand Refugee Resettlement* report.<sup>128</sup> Aside from successfully advocating for an increased annual refugee quota, the Refugee Report advocated for a commitment to alternative forms of admission to people of refugee status to New Zealand, recommending that a generous, culturally sensitive and flexible definition of family should be applied in the case of refugees.<sup>129</sup> Further, regarding *Harmonious Relations*, the Annual Report notes that the Commission developed its first nationwide anti-racism campaign with aims of reducing the proportion of recent migrants who have experienced discrimination and will work towards creating a culture in which racist attitudes are considered unacceptable. To assist this campaign, an online platform to engage New Zealanders went live in the second half of 2016.<sup>130</sup>

Regarding *Discrimination and Inequality*, the Annual Report notes two main online developments. The first development is the updating of the Commission's 'Tracking Equality at Work' web-based tool with the most recent data from 2015 which notes that the private sector lags significantly behind the public sector regarding female representation; respectively 17 per cent and 43.4 per cent. Second, the launch of a new online application entitled '1 in 3 Be Free' which is an education tool designed to help women screen for abuse in their relationship and thereby to empower more women to deal with or escape abusive or controlling relationships.<sup>131</sup>

Next, the Annual Report details the Commission's progress in relation to *Inclusive and Just Society*, noting that this past year the Commission led the publication of the CRPD Independent Monitoring Mechanism *Right to Education* interim report and worked with the Ministry of Education to support inclusive education and increased information-sharing and transparency among agencies. The Commission also held a multi-sector roundtable on the practice of normalizing intersex children in New Zealand.<sup>132</sup>

Regarding *Civil and Political Rights*, the Commission continued to make a significant impact participating in legal proceedings, appearing as an 'intervener', in several major human rights-related cases over the past year. Of note, in February 2016 the Commission participated in *Spencer v Attorney-General* which was litigation concerning 'parents as caregivers'. After awarding Spencer more than \$200,000 in damages, of particular significance, the court also

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<sup>126</sup> Ibid 6.

<sup>127</sup> Ibid.

<sup>128</sup> New Zealand Human Rights Commission, *New Zealand Refugee Resettlement* (HRC, Wellington, 2016) [hereinafter 'Refugee Report'].

<sup>129</sup> Annual Report, above n 125, 2.

<sup>130</sup> Ibid 6–7.

<sup>131</sup> Ibid 7.

<sup>132</sup> Ibid 8.



accepted the Commission's submission that a training order should be made under the *HRA* and directed that the Ministry of Health should educate its officers on the importance of the human rights of disabled persons and their caregivers.<sup>133</sup> The Commission continued to influence law, policy and practice through making multiple submissions to various agencies and Parliamentary Select Committees and further made a successful application for funding from the UN Office of the High Commissioner for Human Rights to carry out a review of seclusion and restraint practices in detention settings.<sup>134</sup> In addition, significant work regarding housing, health and participation issues for vulnerable people impacted by the Canterbury earthquake was undertaken in 2016 by the Commission as a continuation of its monitoring of the recovery. It focused on a human rights impact analysis on the residential red zoning process and resulted in the October 2016 publication of the report *Staying the Red Zones: Monitoring Human Rights in the Canterbury Earthquake Recovery*.<sup>135</sup>

Concerning *Indigenous Rights*, the Annual Report notes that the Commission has actively developed the framework of Indigenous rights outlined in treaty instruments supporting the *UN Declaration on the Rights of Indigenous Peoples* ('*UNDRIP*'). Moreover, of note this year, the Commission, working with Te Puni Kokiri and the Ministry of Justice, developed a *Te mana i Waitangi* training and development programme to increase the understanding of the human rights dimensions of the *Treaty of Waitangi* and was delivered to identified state sector agencies.<sup>136</sup>

Regarding *The Human Rights Record*, the 2016 Annual Report notes that significant progress has been made in the reporting and monitoring frameworks New Zealand has adopted in relation to progress in human rights. Aside from review internationally through treaties and conventions,<sup>137</sup> New Zealand's human rights record is monitored and measured domestically through the National Plan of Action. In 2015, significant improvements in the way that human rights are monitored in New Zealand occurred through the online publication of the New Zealand Human Rights Commission's National Plan of Action 2015–2019 ('*NPA*').<sup>138</sup> The *NPA* details the government's actions in relation to New Zealand's second Universal Periodic Review ('*UPR*') at the UN under its Charter-based mechanisms for the protection of human rights and will be used as the basis of the mid-point *UPR* review.<sup>139</sup> Building on this initiative, in 2016 the Commission, the Ministry of Foreign Affairs and Trade, the New Zealand Treasury and the Ministry of Social Development initiated the first cross-agency effort to discuss the adoption of the Sustainable Development Goals ('*SDG*'). In particular, the future development of the *NPA* is linked to the implementation of the *SDGs* and so the Commission recognized the need for common indicators to measure and monitor achievement in both areas.<sup>140</sup>

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<sup>133</sup> Ibid.

<sup>134</sup> Ibid 9.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid 9–10.

<sup>137</sup> See *ibid.* Section II.

<sup>138</sup> See New Zealand Human Rights Commission, *National Action Plan 2015–2019* (6 June 2016) <<http://npa.hrc.co.nz>>.

<sup>139</sup> Ibid.

<sup>140</sup> Annual Report, above n 125, 11.

Finally, regarding *Human Rights Remedy* the Annual Report notes that the Commission over the past year managed 1274 complaints of unlawful discrimination and successfully resolved or assisted in resolving 84 per cent of these complaints. Beyond this, 3754 other human rights complaints and enquiries were received last year through the Commission's Infoline service.<sup>141</sup>

B The New Zealand Human Rights Commission Report: *Staying in the Red Zones: Monitoring Human Rights in the Canterbury Earthquake Recovery*

As aforementioned in the Commission's Annual Report 2016, significant work regarding housing, health and participation issues for vulnerable people impacted by the Canterbury earthquake was undertaken in 2016 by the Commission as a continuation of its monitoring of the recovery. The culmination of much of this work is in the October 2016 report *Staying in the Red Zones: Monitoring Human Rights in the Canterbury Earthquake Recovery*.<sup>142</sup> Residential red zones ('RRZs') are properties that, after the earthquakes, were considered too uncertain, disruptive, lengthy and uneconomically viable in the short to medium term to repair or rebuild. The Crown offered to purchase RRZ properties from owners to help them avoid the complexities of the insurance process and allow them to move from areas with widespread damage.<sup>143</sup> Offers varied but 99 per cent of owners of RRZ properties accepted the Crown offer of purchase. However, as of March 2016, owners of 121 properties had not accepted the offer.<sup>144</sup> The Red Zone Report is based on results from surveys and interviews completed by people either living in or owning vacant land in Canterbury's RRZs. It approaches the issue from a human rights perspective and draws six main findings as follows:

- First, human rights need to be front and centre in disaster recovery, prevention and preparedness. The guiding principles of the *Sendai Framework*, adopted by the United Nations (including New Zealand) in 2015, place human rights at the centre of disaster risk reduction.
- Second, the right to property is fragile in New Zealand. Property rights need to be better enshrined in the *New Zealand Bill of Rights Act* by Parliament.
- Third, post-disaster it is particularly important for the Crown to exercise its powers carefully and in accordance with the relevant legislation.
- Fourth, the communication needs of people affected by disasters are not confined to the immediate post-disaster period. Affected people need information to make decisions, need to participate in decisions that affect them, and need co-ordinated service delivery. They also want to be treated with respect.
- Fifth, community engagement matters. The way in which government and non-government agencies pursue initiatives will determine how successful these are. The requirement to act swiftly must be weighed against the need to actively engage community in the design and implementation of solutions. A 'nothing

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<sup>141</sup> Ibid.

<sup>142</sup> New Zealand Human Rights Commission, *Staying in the Red Zones: Monitoring Human Rights in the Canterbury Earthquake Recovery* (HRC, Wellington, 2016) [hereinafter 'Red Zone Report'].

<sup>143</sup> Ibid 3.

<sup>144</sup> Ibid 4.

about us without us’ approach requires time, resources, and public and political will, but is essential to ensure that people are not passive recipients of disaster recovery response and risk reduction, but are actively involved in shaping it.

- Finally, there is no one-size-fits-all for disasters: flexibility to consider individual circumstances needs to be incorporated into the design of disaster planning, policies and services. Recognizing flexibility as an intrinsic goal in disaster preparedness results in better outcomes for people and organisations.<sup>145</sup>

### C The New Zealand Human Rights Commission Report: *Investigation into End of Life Matters*

In addition to the issues identified in the Annual Report 2016 and the Red Zone Report, the other major human rights issue that the Commission addressed in 2016 was the assisted dying debate; indeed, the Commission notes that it was the pre-eminent human rights issue of the year. The Commission made a submission to the Health Select Committee in its report *Investigation into End of Life Matters*.<sup>146</sup> The investigation resulted from a petition submitted by Hon. Maryan Street that the House of Representatives fully investigate public attitudes towards the introduction of legislation that would allow medically-assisted dying in the event of terminal illness or conditions that make life unbearable. This follows the landmark case of Lecretia Seales (*Seales v Attorney-General*) who sought a declaration from the High Court that her general practitioner would not be committing a crime if she were to assist her to end her life if the pain and indignity caused by her terminal brain cancer became too unbearable.<sup>147</sup> The ultimate decision confirmed that any action taken by a physician to assist a terminally ill person to take her/his own life continues to constitute a serious criminal offense under the *Crimes Act 1961* in the form of culpable homicide (s 160) and aiding and abetting suicide (s 179(b)).<sup>148</sup>

The *End of Life Report* focuses on two aspects of assisted dying: the current legal situation and international experiences.<sup>149</sup> The principal human rights issues identified in these contexts that form the basis of the report’s structure include: the sanctity of life, respect for human dignity, respect for human autonomy and protection of the vulnerable.<sup>150</sup> The Commission’s main conclusion is that a legal framework that would allow for assisted dying for a competent terminally ill adult to end her or his life (if she or he freely and autonomously chose to do so) could potentially be implemented if:

- It is developed in a manner consistent with core human rights principles;
- Is accompanied by adequate legal and procedural safeguards to protect vulnerable members of society; and

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<sup>145</sup> Ibid 10.

<sup>146</sup> New Zealand Human Rights Commission, *Investigation into End of Life Matters* (HRC, Wellington, 2016) [hereinafter ‘End of Life Report’].

<sup>147</sup> Ibid [1]–[2]. See *Seales v Attorney-General* [2015] NZHC 1239.

<sup>148</sup> Ibid [6]–[9].

<sup>149</sup> Ibid [3].

<sup>150</sup> Ibid [10].

- Appropriate palliative care services are available and remain accessible for all.<sup>151</sup>

The Commission's non-exhaustive list of recommendations to achieve these ends can be categorized as follows:

- The need for high thresholds;
- Decisions must be free from any indication of coercion or influence and must be competently made;
- The need for supporting medical review/and perhaps psychiatric screen;
- A cooling-off period;
- The need for ongoing monitoring and independent review of the system;
- Judicial /expert oversight;
- Participation by medical professionals and others in the process must be voluntary – ie an 'opt out' conscience clause;
- Awareness of cultural considerations;
- The need to ensure access to and standard of palliative care is not compromised and remains a viable and 'first choice' option; and
- The importance of advanced care planning.<sup>152</sup>

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<sup>151</sup> Ibid [48].

<sup>152</sup> Ibid [49].